

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____ ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

INTERIOR DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION FOR ENLARGEMENT REGARDING INTERIOR DEFENDANTS'
MOTION FOR REIMBURSEMENT OF "IMPROPER" SPECIAL MASTER FEES

Interior Defendants respectfully oppose plaintiffs' motion for enlargement of time in which plaintiffs request an undefined enlargement of time to conduct discovery before filing their opposition to Interior Defendants' Motion for Reimbursement of Improper Special Master Fees ("Interior Defendants' Motion"). Plaintiffs' Motion ("Pl. Mot.") at 2. For the reasons stated below, plaintiffs' motion should be denied.

Central to plaintiffs' motion is their misguided effort to divide the public fisc of the United States into a fisc administered by the Treasury Department and a fisc administered by the Interior Department. Relying upon this false premise, plaintiffs further confound their argument by wrongly asserting that Interior Defendants lack "standing" to seek reimbursement of the improperly paid fees. Pl. Mot. at 1-2. Thus, plaintiffs seek to avoid responding to Interior Defendants' Motion and ask for an unbounded enlargement to allow the pursuit of legally unnecessary written discovery and possible depositions of Interior Department and Treasury Department officials." Pl. Mot. at 2 and 2 n.2. Moreover, plaintiffs are not content to rely solely

upon their desire to conduct wasteful discovery before briefing their misplaced "standing" objection to Interior Defendants' Motion; plaintiffs' motion states that they "expressly reserve the right to oppose Interior Defendants' motion for reasons, both procedural and substantive, in addition to standing." Pl. Mot. at 2 n.2 (emphasis added).

As a matter of law, "standing" has no application to the Government's motion in this case. Questions of standing involve constitutional assessments of the power of a federal court to entertain a prospective litigant's cause of action. E.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) ("the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III") (citations omitted); Rainbow/PUSH Coalition v. FCC, 330 F.3d 539, 542 (D.C. Cir. 2003) ("The 'irreducible constitutional minimum of standing contains three elements': (1) injury-in-fact, (2) causation, and (3) redressability.") (citing Lujan). As a matter of law, constitutional questions of "standing" are not at issue when a defendant – particularly, for the reasons further discussed below, a federal defendant – files a motion in a pending case. Rather, standing only pertains to the power of a federal court to entertain a plaintiff's claim.

Aside from plaintiffs' flawed reliance upon the law of standing, plaintiffs' motion should be denied because the law does not recognize a "division" between the Treasury Department's "fisc" and the Interior Department's "fisc." To the contrary, it is fundamental that the United States Government is considered a "unitary" entity for financial matters, and it is of no consequence which agency's "budget" actually absorbs the costs of the litigation. See generally In re Turner, 84 F.3d 1294, 1296 (10th Cir. 1996); In re Whimsy, Inc., 221 B.R. 69, 72 (S.D.N.Y. 1998) (citing Cherry Cotton Mills v. United States, 327 U.S. 536, 637 (1946)); see also Doe v.

United States, 58 F.3d 494, 498 (9th Cir. 1995) (United States' representation that it is prepared to be considered a single debtor is "commendable . . . because it often seeks to be treated as a single unitary creditor under [Bankruptcy law]"); In re Lopes, 211 B.R. 443, 445 (D.R.I. 1997) ("It is well settled under the common law that the United States is a unitary creditor, a status which allows mutuality to exist in a situation where different government agencies, departments or entities are involved.").

Plaintiffs' motion provides no support for the notion that the specific agency budgetarily impacted by a Government payment must be a "party" to a motion seeking to recover improperly paid taxpayer monies, and we are aware of no authority for that proposition.¹ Moreover, plaintiffs' ability to respond to Interior Defendants' arguments for repayment are unaffected by which Government agency was the moving force seeking repayment.² Rather, plaintiffs' motion simply represents an effort to avoid dealing with the merits of Interior Defendants' Motion and to waste governmental resources – both Judicial and Executive – on yet another discovery frolic and detour.

Conclusion

Although plaintiffs reserve the option of later raising all procedural and substantive objections, Pl. Mot, at 2 n.2, the sole ground cited in their motion for an enlargement of time to

¹ Plaintiffs erroneously assert that "it is apparent that the Treasury defendant, not the Interior defendants, has paid most (if not all) of the fees and expenses that have been contested by [Interior Defendants' Motion]." Pl. Mot. at 2. To the contrary, it should be apparent to all that payments "by" the Treasury Department look just like payments "by" the Interior Department, and that the only difference raised by plaintiffs' motion pertains to which Executive Branch budget absorbs the costs of the payments.

² Of course, plaintiffs do not need an enlargement to brief any of their "reserved" issues. See Pl. Mot. at 2 n.2

allow them to conduct discovery is their "red herring" argument, wrongly predicated upon the constitutional requirement of standing to bring an action in federal court, that the Court is incapable of adjudicating Interior Defendants' Motion. Rather than respond to questions about the propriety of the Special Master's charges, plaintiffs seek to conduct discovery that will, in the end, have no bearing upon the merits of Interior Defendants' Motion. For the foregoing reasons, we respectfully request that the Court deny plaintiffs' motion for an enlargement of time to submit their opposition to Interior Defendants' Motion for Reimbursement of Improper Special Master Fees.

Respectfully submitted,

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October 29, 2003

CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2003 the foregoing *Interior Defendants' Memorandum in Opposition to Plaintiffs' Motion for Enlargement Regarding Interior Defendants' Motion for Reimbursement of "Improper" Special Master Fees* was served by Electronic Case Filing, or as otherwise indicated below, upon:

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